

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JERRY L. JOHNSON,

Plaintiff,

-against-

COURT OF APPEALS, *et al.*,

Defendants.

20-CV-5480 (LLS)

ORDER

LOUIS L. STANTON, United States District Judge:

By order dated September 2, 2020, the Court directed Plaintiff to amend his complaint to address deficiencies in his original pleading. Plaintiff filed an amended complaint, and the Court dismissed it on December 15, 2020, but granted Plaintiff thirty days' leave to submit a second amended complaint to provide any additional facts giving rise to a viable claim. That order specified that failure to comply would result in entry of judgment. On January 1, 2021, Plaintiff filed a notice of appeal. *See Walker v. Jastremski*, 430 F.3d 560, 562-64 (2d Cir. 2005) (under the prison mailbox rule, the date a plaintiff signs a court submission qualifies as the filing date).

The notice of appeal is premature, as the Court has issued only nonfinal orders that have not been certified for interlocutory appeal. *See, e.g., United States v. Rodgers*, 101 F.3d 247, 252 (2d Cir. 1996) (deeming a notice of appeal from a nonfinal order to be "premature" and a "nullity," and holding that the notice of appeal did not divest the district court of jurisdiction); *Gortat v. Capala Bros., Inc.*, No 07-CV-3629 (ILG), 2008 WL 5273960, at *1 (E.D.N.Y. Dec. 18, 2008) ("An exception . . . [to the general rule that an appeal deprives a district court of jurisdiction] applies where it is clear that the appeal is defective, for example, because the order appealed from is not final and has not been certified for an interlocutory appeal.").

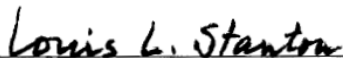
The Court grants Plaintiff thirty days from the date of this order to submit a second amended complaint should he wish to do so. If Plaintiff does not submit a second amended

complaint within the time allowed, and he cannot show good cause to excuse such failure, the Court will enter judgment, the matter will be dismissed for the reasons set forth in the December 15, 2020 order of dismissal, and the appeal will proceed.

The Clerk of Court is directed to mail a copy of this order to Plaintiffs and note service on the docket.

SO ORDERED.

Dated: January 22, 2021
New York, New York



Louis L. Stanton
U.S.D.J.